

**EXHIBIT G**

**TO DEFENDANT ICANN'S REQUEST FOR  
JUDICIAL NOTICE ISO MOTION TO DISMISS  
CFIT'S AMENDED COMPLAINT**



## Amendment 5 to ICANN/DOC Memorandum of Understanding

(Approved 17 September 2002)  
(Entered 19 September 2002)

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### Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers

#### Amendment 5

**WHEREAS**, the U.S. Government supports the policy of privatizing the technical management of the Internet domain name and addressing system (DNS) now performed by or on behalf of the U.S. Government or by third parties under arrangements or agreements with the U.S. Government;

**WHEREAS**, the U.S. Government will effect such privatization by entering into agreement with and seeking international support for a not-for-profit corporation formed by private sector Internet stakeholders to administer DNS policy;

**WHEREAS**, on November 25, 1998, the U.S. Department of Commerce (Department) on behalf of the U.S. Government entered into a Memorandum of Understanding (Agreement) with the Internet Corporation for Assigned Names and Numbers (ICANN), a private sector, not-for-profit corporation, for the purpose of the joint development of the mechanisms, methods, and procedures necessary to effect the transition of DNS management to the private sector;

**WHEREAS**, the Agreement contemplated that the Parties would collaborate on the DNS Project, in which the Parties would jointly design, develop, and test the mechanisms, methods, and procedures to carry out the following DNS management functions:

- a. Establishment of policy for and direction of the allocation of IP number blocks;
- b. Oversight of the operation of the authoritative root server system;
- c. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
- d. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and
- e. Other activities necessary to coordinate the specified DNS management

functions, as agreed by the Parties;

**WHEREAS**, work to be performed under the Agreement was intended to demonstrate that management responsibility for the DNS could be performed by ICANN;

**WHEREAS**, the Agreement has been amended four times to refine the work to be performed and to extend the term of the Agreement, such term currently to expire on September 30, 2002;

**WHEREAS**, ICANN has achieved significant successes over the past three and one-half years, but has identified limitations that hamper its ability to complete the tasks required under the Agreement successfully;

**WHEREAS**, ICANN President Stuart Lynn in February 2002 initiated a discussion of organizational restructuring and overall reforms to improve ICANN's internal corporate governance and processes related to DNS management;

**WHEREAS**, in March 2002, ICANN's Board of Directors (ICANN's Board) charged the Committee on Evolution and Reform (ERC) to evaluate proposals and to make recommendations to ICANN's Board concerning, among other things, ICANN's structure, mission, and essential functions;

**WHEREAS**, on June 28, 2002, ICANN's Board adopted the ERC's Blueprint for Reform and charged the ERC with further developing an implementation and transition plan, such recommendations to be considered by the Board at its meeting currently scheduled to occur in October 2002;

**WHEREAS**, the Department supports ICANN's efforts to reexamine its mission, structure, and processes for their efficacy and appropriateness in light of the needs of today's Internet and to improve its future ability to carry out its DNS Project management responsibilities pursuant to the Agreement, effectively and in a stable manner;

**NOW THEREFORE**, in recognition of ICANN's progress in achieving the tasks and goals set forth in the Agreement and of its on-going work on reforming its structure and operations, as described in the *Fourth Status Report to the Department*, dated August 15, 2002, the Parties hereby agree as follows:

I. The Department reaffirms its policy goal of privatizing the technical management of the DNS in a manner that promotes stability and security, competition, coordination, and representation. Consistent with this objective and in furtherance of the DNS Project, the Parties agree to strike V.B. in its entirety and to substitute the following:

B. Department. The Department agrees to perform the following activities and provide the following resources in support of the DNS Project:

1. Provide expertise and advice on DNS management functions.
2. Provide expertise and advice on methods and administrative procedures for conducting open, public proceedings concerning policies and procedures that address the technical management of

the DNS.

3. Identify with ICANN the necessary software, databases, know-how, other equipment, and intellectual property necessary to design, to develop, and to test methods and procedures of the DNS Project.

4. Participate, as necessary, in the design, development, and testing of the methods and procedures of the DNS Project to ensure continuity, including coordination between ICANN and VeriSign, Inc.

5. Collaborate on a study on the design, development, and testing of a process for making the management of the root server system more robust and secure. This aspect of the DNS Project will address:

a. The current status of the root server system;

b. Operational requirements of root name servers, including host hardware capacities, operating system and name server software versions, network connectivity, and physical environment;

c. Security aspects of the root name server system and review of the number, location, and distribution of root name servers, considering the total system performance, robustness, and reliability; and

d. Operational procedures for the root name server system, including formalization of contractual relationships under which root name servers throughout the world are operated.

6. Consult with the managers of root name servers operated by the U.S. Government with respect to operational and security matters of such root name servers and recommendations for improvements in those matters.

7. Work collaboratively within ICANN's Governmental Advisory Committee (GAC) to encourage the creation of stable agreements between ICANN and the Regional Internet Registries (RIRs).

8. Consult with the international community on aspects of the DNS Project.

9. Provide general oversight of activities conducted pursuant to this Agreement.

10. Maintain oversight of the technical management of DNS

functions currently performed either directly by, or subject to agreements with, the U.S. Government, until such time as further agreement(s) are arranged as necessary for the private sector to undertake management of specific DNS technical management functions.

11. Consult with foreign governments to promote increased and more effective governmental participation in the GAC. Such activities shall include working with the GAC on steps governments should take to advance ICANN's efforts to achieve stable agreements with organizations operating country code top level domains (ccTLDs).

II. ICANN reaffirms its commitment to maintaining security and stability in the technical management of the DNS, and to performance as an organization founded on the principles of competition, bottom up coordination, and representation. Consistent with these objectives and in furtherance of the DNS Project, the Parties agree to strike V.C. in its entirety and to substitute the following:

C. ICANN. ICANN agrees to perform the following activities and provide the following resources in support of the DNS Project, in conformity with the ICANN Board-approved mission and core values and in furtherance of its ongoing reform efforts:

1. Continue to provide expertise and advice on private sector functions related to technical management of the DNS.
2. Work collaboratively on a global and local level to pursue formal legal agreements with the RIRs, and to achieve stable relationships that allow them to continue their technical work, while incorporating their policy-making activities into the ICANN process.
3. Continue to develop, to test, and to implement processes and procedures to improve transparency in the consideration and adoption of policies related to technical management of the DNS.
4. Continue to develop, to test, and to implement accountability mechanisms to address claims by members of the Internet community that they have been adversely affected by decisions in conflict with ICANN's by-laws, contractual obligations, or otherwise treated unfairly in the context of ICANN processes.
5. Collaborate with the Department to complete development of a proposal for enhanced architecture for root server security together with the development of the following documentation to be used in connection with testing and implementation of the enhanced root-server system architecture:
  - a. A written description of the enhanced architecture incorporating a dedicated primary root server and

standards for physical protection;

b. A procedural plan for transition to the enhanced architecture;

c. An implementation schedule for transition to the enhanced architecture;

d. The documentation of IANA procedures for root zone editing, root zone generation, and root zone WHOIS service; and

e. An agreement between ICANN and root-server operators that formalizes stable, secure, and professional operation of the root-servers in accordance with the enhanced architecture.

ICANN shall submit a report to the Department no later than November 30, 2002, providing a description of the current status of the root server system. ICANN shall submit a report to the Department no later than December 31, 2002, providing a description of the proposal for enhanced architecture for root server security as set forth above, a procedural plan for the transition to such enhanced architecture, and an implementation schedule for such transition.

6. Following Departmental review and approval of the documentation listed in paragraph 5 above, test and implement the enhanced root-server system architecture, including ICANN's operation of the authoritative root, under appropriate terms and conditions.

7. Continue its efforts to achieve stable agreements with ccTLD operators that address, among other things, issues affecting the stable and secure operation of the DNS, including: delegation and redelegation of ccTLDs; allocation of global and local policy-formulation responsibility; and the relationship between a ccTLD operator and its relevant government or public authority. Such efforts shall include activities to foster greater dialogue between ccTLD operators and the GAC.

8. Continue the process of implementing new top level domains (TLDs), which process shall include consideration and evaluation of:

a. The potential impact of new TLDs on the Internet root server system and Internet stability.

b. The creation and implementation of selection criteria for new and existing TLD registries, including public

explanation of the process, selection criteria, and the rationale for selection decisions.

c. Potential consumer benefits/costs associated with establishing a competitive environment for TLD registries.

d. Recommendations from expert advisory panels, bodies, agencies, or organizations regarding economic, competition, trademark, and intellectual property issues.

9. Continue to develop, to test, and to implement appropriate mechanisms that foster informed participation in ICANN by the global Internet community.

10. Collaborate on other activities as appropriate to fulfill the purpose of this Agreement, as agreed by the Parties.

11. Provide a status report on its progress towards the completion of its tasks under this Agreement on or before December 31, 2002, and at the end of each quarter thereafter for the term of this Agreement. Such report shall also describe the status of the implementation of ICANN's reform efforts.

III. Strike Section VII of the Agreement and replace it, in its entirety, with:

This Agreement will become effective upon signature of ICANN and the Department. This Agreement will terminate on September 30, 2003. This Agreement may not be amended except upon the mutual written agreement of the Parties. Either Party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other Party. If this Agreement is terminated, each Party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

IV. Except as specifically modified by this Amendment 5, the terms and conditions of the Agreement, as previously amended, remain unchanged.

FOR THE NATIONAL  
TELECOMMUNICATIONS AND  
INFORMATION ADMINISTRATION:

FOR INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS:

/s/

\_\_\_\_\_  
Name: Nancy J. Victory  
Title: Assistant Secretary for  
Communications and Information  
Date: September 19, 2002

/s/

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Name: M. Stuart Lynn  
Title: President and Chief Executive Officer  
Date: September 18, 2002

Comments concerning the layout, construction and functionality of this site should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

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